

THE COLUMN

THE NEWSLETTER OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS

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A MESSAGE FROM THE BOARD PRESIDENT –

William F. Winters, D.C.



Welcome to the newsletter of the New Jersey State Board of Chiropractic Examiners. We trust this newsletter will be a valuable source of information for our licensees.

First, I would like to welcome the new members of our board, Drs. Mary Ellen Rada, Lawrence O'Connor, and Joseph Murphy. All are a welcome addition to the Board. Also, I would like to recognize the other members of the Board, Drs. Kim Stetzel, Thomas Senatore, Robert Apuzzio and Brian Atkisson, as well as our two public members, Morton Blum and Hadren Simmons. I would like to thank all of the members of the Board for their dedication and hard work while dealing with issues that come before them.

Needless to say, the Board has been busy addressing a variety of issues. It is our purpose to continue to protect the public as well as regulate our licensees. In doing so, we continue to investigate complaints that come from consumers licenses and

the insurance industry. In addition to this, it is our responsibility to introduce regulations, when necessary. An example of current regulations the Board has adopted is the Electrodiagnostic Testing Regulation, which has been enacted as a result of former Governor Whitman's insurance reform initiatives. In response to a number of concerns that have been expressed regarding insurance reviews, the Board is currently in the process of developing two separate initiatives to address patient record and utilization reviews. The Patient Record Review regulation has been formally published as a proposal and a public hearing has been held.

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A MESSAGE FROM THE EDITOR –

Joseph J. Murphy, D.C.



Greetings Colleagues:

This is the first issue of what we hope will become a quarterly publication of the New Jersey State Board of Chiropractic Examiners.

As a new member of the State Board of Chiropractic Examiners, I'm excited and enthusiastic about what lies ahead for chiropractic and the chiropractic consumers of New Jersey. I begin this issue by welcoming our other new board members, Mary Ellen Rada, D.C., from Jackson, New Jersey, and Lawrence O'Connor, D.C., from Westwood, New Jersey. My own practice is located in Chatham, New Jersey.

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This newsletter is published by the State Board of Chiropractic Examiners for its licensees. Inquiries should be addressed to: State Board of Chiropractic Examiners, New Jersey Division of Consumer Affairs, P.O. Box 45004, Newark, NJ 07101

Office of the Insurance Fraud Prosecutor

The Office of the Insurance Fraud Prosecutor (OIFP) was created as part of the Automobile Insurance Cost Reduction Act (AICRA). OIFP is responsible for investigating all types of health-care fraud and serves as the focal point for all criminal, civil and administrative prosecutions for insurance and Medicaid fraud. OIFP is also responsible for coordinating all insurance fraud-related activities of State and local departments and agencies to enhance the State's integrated law enforcement system.

OIFP works closely with deputy attorneys general from the Division of Law, investigators of the Division of Consumer Affairs' Enforcement Bureau and the professional and occupational boards. Despite their extensive training and education, licensees of the professional and occupational boards may be tempted to exploit their positions of authority and engage in fraudulent acts. This conduct may include utilizing a professional license to bill for services not rendered, upcoding CPT codes, overutilization of services to increase fees for services, as well as billing two separate insurance carriers for the same services. Illegally adding a noneligible person to a group health policy or submitting bogus personal medical bills to the licensee's personal health insurance carrier also constitutes insurance fraud. The fraudulent act may also involve participating in staged auto accidents or making material misstatements on an automobile insurance policy.

Professional licensees are subject to civil penalties if they are found to have engaged in insurance fraud. Furthermore, the fraudulent act may be judged to be criminal and may result in a criminal conviction, incarceration or probation and fines. Civil or criminal enforcement action will cause OIFP to refer the matter to the appropriate professional or occupational board for the initiation of an administrative disciplinary action. Boards can utilize the action taken by OIFP as sister-agency disciplinary action and file an administrative complaint based solely on the OIFP action. Sanctions range from a reprimand to the revocation of the professional's license.

OIFP has made significant strides in making its law enforcement presence known, including conducting an advertising campaign and publicizing the fact that insurance and Medicaid fraud are serious crimes that will result in serious consequences for those who commit such fraud in New Jersey.

Notes from the Executive Director

by Kevin B. Earle, with input from the Board

A Word to the Wise

Many chiropractors are working in nonownership “associate” positions and many more are considering such positions. While the vast majority of these types of arrangements may be beneficial to the associate, who gains valuable experience in practice, there are situations that sometimes can and should be avoided. Many offices are staffed by associate chiropractors and in some instances the owner is not located on-site and may not be directly involved with patient care. The Board, the Office of the Insurance Fraud Prosecutor and many insurance companies are also mindful that some practices may not even be owned and operated by licensed health care professionals. Nonlicensee ownership of health care practices has long been determined by the courts and the Attorney General to be impermissible in New Jersey. As such, any associate employed in such a position may bear full responsibility for the treatment rendered to patients, and for the charges made to insurance carriers, as a function of his or her professional licenses. Any licensee identified in the patient record as the “chiropractor of record” pursuant to Board regulations contained in N.J.A.C. 13:44E-2.4, is cautioned that he or she bears primary responsibility for assuring the proper implementation of chiropractic services rendered to the patient.

1. Be alert to situations where the owner, or an absentee owner, demands certain diagnostic testing protocols regardless of the patient’s clinical condition. Board regulations require that the clinical necessity for the diagnostic testing on a patient must be demonstrated in the patient’s record.
2. Physical modalities (therapies) on any patient must also be justified by the clinical presentation as recorded in the

patient’s record. A licensee may order or administer physical modalities under Board regulations, but they must always be accompanied by a spinal adjustment.

3. Always be aware of the tests and fees being billed to insurance companies for the patients for whom you are caring. As the attending doctor you can be held responsible if billing is generated for services that were not performed or inaccurately or incorrectly coded and billed.



4. As the chiropractor of record, do not permit others to order or perform any procedure or diagnostic test on a patient for whom you are caring unless your clinical records, which must accurately reflect the patient’s condition, justify the necessity of such a procedure or test.

5. Be aware of compensation being given to anyone, including lawyers, agents or the patients themselves as inducement to become a patient. Such compensation is in violation of State law and is most often associated with personal injury cases. The use of so-called “runners” is now a criminal offense in the State of New Jersey.

6. Be aware of referral fees or schemes particularly associated with diagnostic testing facilities or mobile or in-office diagnostic testing companies. It is a violation of Board regulations to accept compensation in return for the referral of patients.
7. Be mindful of Board regulations that identify which tasks or functions may be delegated to unlicensed individuals, especially with respect to certain physical modalities like electrical stimulation or ultrasound, which can potentially be dangerous to the patient in the hands of an untrained and unlicensed individual.



practitioner issues

Common Advertising Problems

Advertising is a common practice in the chiropractic community. All licensees should take the time to carefully review the State Board of Chiropractic Examiners regulations on advertising before embarking on an advertising and marketing campaign. The complete regulations are contained in N.J.A.C. 13:44E-2.1.

Here are some common mistakes that could potentially result in a violation of these regulations:

- failure to clearly and conspicuously identify yourself as a D.C., Chiropractor or Chiropractic Physician; the word “Doctor” must always be qualified to distinguish a Chiropractor from an M.D. or D.O.;
- offering a free or discounted service without stating the fixed or stated range of fees against which the discount is to be made or the value of the free service;
- making a statement which is false, misleading, fraudulent or deceptive;
- claims of superiority;
- using a patient’s personally identifiable facts, photographs, data or information without his or her written permission;
- failure to include the name of the licensee, address and telephone number on an advertisement;
- offering services outside the scope of practice of a chiropractor;
- promises of a “cure.”

Licensees are presumed to have approved and are personally responsible for the form and content of advertisements. Violations of advertising regulations may result in public disciplinary action including monetary penalties.

The Importance of Patient Records

Keep this adage in mind: “If it’s not in the patient record, it didn’t happen!”

As the regulator of chiropractic practice in this State, the Board has an opportunity to review hundreds of chiropractic patient records on an annual basis. In many cases, both the quantity and quality of the documentation contained in the record falls measurably short of the minimum standards required by Board regulations. From a risk-management perspective, poor documentation leaves a chiropractor exposed to potential liability in negligence or malpractice claims. From a Board perspective, the licensee, at the

very least, could be cited for violations of the Patient Record Regulation, which is contained in N.J.A.C. 13:44E-2.2.

Licensees are required to prepare and maintain a permanent and contemporaneous patient record for every patient, regardless of whether any treatment was actually rendered or any fee charged. Records of billings made to patients and third-party carriers for professional services must be part of the record and all such billings must accurately reflect the treatment or services given. The following items, at a minimum, are required to be noted in the record:

- The name, address and date of birth of the patient and, if a minor, the name of the parent or guardian;
- The patient’s complaint or reason for the visit;
- A pertinent case history;
- Findings on appropriate examination;
- Diagnosis and analysis;
- A treatment plan;
- Any orders for tests or consultations and the results thereof;
- The dates of each visit by the patient;
- A description of services rendered

Diagnostic Testing

With the passage of the Automobile Insurance Cost Recovery Act (AICRA) the State Board of Chiropractic Examiners (“Board”) was required to develop comprehensive guidelines on the use of diagnostic and electrodiagnostic testing and special examinations. The Board recommends that all licensees involved in such testing become familiar with the current regulations, which became effective in March 1999. The regulations appear in the Board’s Statute and Regulation Book (which was recently mailed to all licensees) beginning on page 59, or they can be accessed on the New Jersey Division of Consumer Affairs’ Web site at www.state.nj.us/lps/ca/chiro/chinolaw.htm.

The new regulations identify which tests may be performed and billed for by chiropractors and prescribes heightened requirements to make certain that such testing is clinically supported by the patient’s record. The use of electrodiagnostic testing is permissible by chiropractors who have received specialized training in the performance and interpretation of such tests. The Board is currently in the process of identifying the specific training requirements and once these are established, licensees will be required to apply to the Board for a certificate attesting to the additional training. In the meantime, practitioners who were performing the permissible tests prior to the implementation of the regulation (March 1, 1999) may continue to do so until such time as the Board implements the certification program.

The regulations specifically identify tests that have not been reliably demonstrated to yield sufficient diagnostic information to identify conditions amenable to chiropractic care beyond the information that would be ascertainable from taking a comprehensive history or by performing a thorough clinical examination. Such tests include spinal diagnostic ultrasound, current perception threshold tests, iridology, reflexology or surrogate arm mentoring. The regulation further identifies tests which do have recognized reliability and validity, and that may be performed by chiropractors subject to certain limitations, but only when clinically indicated and supported by the patient’s record. Furthermore, the regulations make clear that needle electromyography (EMG) and any test that requires the administration of medication must be referred to an appropriately trained medical doctor.

The regulations specifically set forth: basic pre-test prerequisites and standards; the issues of informed consent; the requirements to be physically present during the administration of the test; when and how a testing assistant may be utilized; and recordkeeping requirements.

The results obtained from such testing must be incorporated into the patient’s treatment plan and the treating chiropractor has an obligation to discuss the results of such testing with the patient.

Finally, the rule sets forth limitations on referrals for such testing and clarifies the permissible relationships between chiropractors and other professionals offering such testing.

at each visit together with the name of the licensee or other person rendering the treatment;

- Notation of significant changes in the patient’s condition and/or significant changes in treatment plan;
- Periodic notation of the patient’s status regardless of whether significant changes have occurred; and
- An itemized statement of the amount billed and received on the patient’s account.

Chiropractors should also be aware that a heightened recordkeeping requirement is now in place for diagnostic testing (see related article).

Higher Education Loan Defaults

Under a new law enacted in 1999, the Director of the Division of Consumer Affairs, or the Board, may suspend the license of any person who has been certified by a lender or guarantor for nonpayment or default of a State, federal direct or guaranteed educational loan. The license may not be reissued until the person provides the Director or the Board with a written release by the lender or guarantor that the person has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the lender or guarantor. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement is automatic upon receipt of the notice, subject to the payment of a current registration fee plus a reinstatement fee.

Scope of Practice Issues

Nutritional Counseling, Vitamins and Nutritional Supplement

Laws defining the practice of chiropractic, specifically N.J.S.A. 45:9-14.5, prohibit chiropractors from prescribing, administering or dispensing drugs or medicines for any purpose whatsoever. The term “drug” is broadly interpreted to include any article that is recognized in the United States Pharmacopeia, the official Homeopathic Pharmacopeia or the National Formulary, and includes vitamin and nutritional supplements.

“Scope of Practice” is further defined in Board regulations at N.J.A.C. 13:44E-1.1. Subsection (d) of those regulations permits a chiropractor to offer general nutritional advice to patients when such advice is incidental to chiropractic care. Licensed chiropractors are not permitted to offer nutritional advice as a treatment for a specific disease, defect or deformity.

Body Contouring Services

The Board has become aware that certain devices have been marketed to chiropractors in this State, which claim to mobilize and reduce subcutaneous fat and cellulite. Licensees should be advised that the offering of such services in connection with a chiropractic practice is outside the licensee’s scope of practice as a chiropractor, and may subject the licensee to potential disciplinary action and financial penalties.

Consistent with these regulations, licensees are likewise not permitted to sell, dispense or derive any financial benefit from the sale of vitamins, food products or nutritional supplements, nor may they represent themselves as nutritional consultants.

The Board has become aware of certain arrangements with vitamin and nutritional supplement suppliers which, upon referral of a patient, provides remuneration in the form of commissions or other forms of payment to the referring chiropractor. Such arrangements can be construed as a re-

ferred fee, which is also prohibited by Board regulations in N.J.A.C. 13:44E-2.7. Licensees should also be aware that arrangements where another member of the licensee’s family derives some financial benefit from a referral, potentially may violate statutory prohibitions on self-referral contained in N.J.S.A. 45:9-22.5.

Violations of any law or regulation governing the practice of chiropractic in the State of New Jersey may result in disciplinary action, up to and including suspension or revocation of license privileges.

Multidisciplinary Practice Task Force

In response to the increasing prevalence of the formation of practices involving physicians, chiropractors and physical therapists, the State Board of Chiropractic Examiners has established a Multi-Disciplinary Practice Task Force chaired by Dr. Thomas Senatore, D.C. The focus and purpose of the Task Force is to monitor the regulatory developments of other states and the federal government, and to consult with other licensing boards (specifically the State Board of Medical Examiners and the State Board of Physical Therapy) and the Attorney General, with a goal of establishing appropriate protocols for the formation and operation of such practices. While there is certainly a valid benefit to patients by functioning in such arrangements to ensure coordination of care, concern has been expressed that many such practices have been formed for the sole purpose of maximizing insurance reimbursement. As a result, many have become vehicles for fraudulent activity.

At the present time, the State Board of Chiropractic Examiners (“Board”) does not have regulations governing professional practice structures. However, licensees should be aware that the State Board of Medical Examiners has extensive proscriptions for the formation and operation of medical practices, including a requirement that plenary licensed physicians (M.D.’s and D.O.’s) may not be employed by individuals who hold limited licenses (such as chiropractors or physical therapists).

Until this Task Force has compiled its recommendations, the Board seeks to caution licensees contemplating a D.C.-M.D.-P.T. relationship for their practice. We suggest that they should obtain competent and independent legal counsel before entering into any contractual arrangement to be certain that the arrangement complies with the most current state and federal regulatory requirements.

Further guidance on these issues will be forthcoming once the Board has reviewed the Task Force Report.

Contact with Board Members

The Board operates in a quasi-judicial capacity when regulating the practice of chiropractic. Contacting Board members directly on any matter that might potentially result in a disciplinary action against a licensee who has or will soon appear before the Board is considered, under the law, an ex parte communication, which is required to be reported to the Attorney General and must be made a part of the public record. Ultimately, such communication may cause the Board member to be recused from consideration of a question or controversy that comes before the Board. Board members must provide the opportunity for individuals to present both sides of an issue before the Board can render an opinion. Licensees should direct any inquiry concerning a Board matter to the Board office for inclusion on a Board meeting agenda.

NJBCE
News

New Jersey Gains Input on FCLB Committees

In January 2001, state board member Lawrence O'Connor, D.C., was appointed a member of the Chiropractic Information Network – Board Action Database (CIN-BAD) Promotion Committee of the Federation of Chiropractic Licensing Boards (FCLB). CIN-BAD is the central computerized repository for actions taken by licensing agencies across the country. The committee will explore ways to promote the use of CIN-BAD as a credentialing tool.

Executive Director Kevin Earle was also appointed a member of the FCLB Task Force on Continuing Education, which is exploring the development of a centralized system of approval for continuing education courses for use by licensing agencies. Such a program would benefit continuing education (CE) providers, who often must seek CE approval from individual licensing agencies.

Executive Director Elected President of Board Administrators

Kevin B. Earle, executive director of the State Board of Chiropractic Examiners, was elected to a two-year term as national president of the Association of Chiropractic Board Administrators (ACBA) at its annual meeting in San Antonio, Texas. ACBA provides opportunities for administrators of the 54 licensing jurisdictions in the United States and Canada to meet and share common goals and experiences in order to facilitate communication between chiropractic licensing agencies.

CASES AND CONTROVERSIES

Many times Board members are contacted by licensees to handle specific controversies. This has occurred most recently when a licensee had a less-than-satisfactory experience in dealing with another licensee who was employed or engaged by an insurance carrier to render opinions concerning insurance reimbursement. In consideration of these matters, the Board advises its licensees that it is not in a position to address specific questions raised without having an opportunity to review the records in question and allow both sides the opportunity to provide a written response. While the complaining party may have accurately articulated his or her concerns about the controversy, the representations made may be colored by strong opinions on either side. Therefore, when such matters are submitted for the Board's consideration, complete information should be presented, including relevant patient records. The Board will then contact the other party and request a written response.

Disciplinary Actions

Daniel S. Fontanella, D.C. – Consent Order filed December 23, 1998, based upon an arrest for unlawful possession of controlled dangerous substance, possession of certain drug paraphernalia and certain other offenses. ORDERED: License to practice chiropractic suspended until respondent appears before the Board and establishes fitness and capacity to return safely to practice.

Alan L. Marcus, D.C. – Order of Voluntary Temporary Suspension of License filed January 14, 1999. Arrested and charged with two counts of criminal sexual contact with patients. ORDERED: Voluntary Temporary Suspension, effective immediately, pending resolution of the criminal charges against respondent and until further order of the Board.

Francis Sartiano, D.C. – Final Order filed February 22, 1999, based upon a conviction in United States District Court for mail fraud and subscribing a false tax return. ORDERED: revocation of license.

Gina Garcen, D.C. – Consent Order filed March 8, 1999, based upon a conviction in New Jersey Superior Court on a charge of bribery. ORDERED: Surrender license to practice chiropractic in the State of New Jersey; cease and desist from engaging in the profession of chiropractic; the Order is without prejudice to the Board's future imposition of disciplinary measures or further investigation and prosecution of any violations by respondent; pay one-half of the cost of investigation.

Eugene Hession, D.C. – Settlement Letter in Lieu of Disciplinary Proceeding issued March 10, 1999, for advertising violations. ORDERED: Formal reprimand and ordered to cease and desist from using terms of superiority; issuance of a formal reprimand; a penalty of \$500.

Barbara Scheyer, D.C. – Settlement Letter in Lieu of Disciplinary Proceeding issued March 10, 1999, based upon violations of Board advertising regulations in the offering of discounts and fee reductions or free services. ORDERED: Describe to the offeree exactly what the free offer constitutes; obtain a signed waiver from the patient as required by regulation; issuance of a formal reprimand; imposition of a penalty of \$250.

Richard Finder, D.C. – Final Decision and Order filed April 22, 1999; based upon a conviction by way of a guilty plea in Superior Court in Bergen County for theft by deception, attempted theft by deception and falsifying and tampering with records. ORDERED: Three-year suspension, six months active; to complete ethics course within six months of active suspension; assessed costs of \$837.67; submit to the Board a quarterly report from the Probation Department; subject to random and unannounced audits of the respondent's patient and billing records; Respondent shall cease and desist from any and all misrepresentation, fraud, deception or any other unlawful act in connection with the submission of insurance claims on behalf of patients.

Craig Jacobson, D.C. – Consent Order filed April 22, 1999, based upon a conviction in New Jersey Superior Court for a scheme involving the payment of bribes to a Jersey City Police Department employee in return for copies of accident reports; and based upon an arrest and conviction for possession of controlled dangerous substances. ORDERED: Surrender license to practice chiropractic; cease and desist from engaging in the profession of chiropractic; shall comply with all provisions contained in the Directive Regarding Future Activities of Chiropractic Board Licensee Who has Been Disciplined; to be without prejudice to the Board's future imposition of disciplinary measures or further investigation and prosecution of any statutes or regulations governing the practice of chiropractic medicine in this State; pay one-half of the Board's costs of investigation; may petition for reinstatement according to the following requirement; shall participate in an outpatient aftercare and attend Narcotics Anonymous for 90 days; shall submit to random urine monitoring under the supervision of a Board-approved entity on a random and unannounced basis, twice weekly; all costs associated with the monitoring program shall be paid directly by respondent.

Robert LaDuca, D.C. – Final Order and Decision filed June 30, 1999, based upon rendering chiropractic testing and treatment without documented medical necessity. ORDERED: revocation of license; assessed civil penalties of \$101,200.

Juan C. Grana, D.C. – Settlement Letter In Lieu of Disciplinary Proceeding issued July 26, 1999; based upon a violation of scope of practice by distribution of nutritional supplements. ORDERED: Cease and desist from soliciting products in office and on professional letterhead; issuance of a formal reprimand; imposition of a penalty of \$1,000.

Disciplinary Actions

Joseph T. Ruane, D.C. – Final Order filed August 20, 1999 based upon respondent's proffer of professional interpretations of spinal diagnostic ultrasound films for Medical Diversified Services Inc., a general business corporation not authorized to offer performance/interpretation of medical screening and/or diagnostic services; licensure and billing to patients and/or insurance carriers for diagnostic medical testing services for services which he was not authorized to perform or interpret. ORDERED: Suspension of two years, six months active, with the balance to be served as a period of probation; assessed investigative costs of \$705; assessed penalties of \$2,500; required to complete 100 hours of continuing chiropractic education; cease and desist from offering and billing for any form of health-related diagnostic testing; and corporate dissolution. Testing may only be offered in an accredited research setting and without a fee; Respondent must fully identify himself verbally and on all written representations and fully disclose in writing at the time of such prescribing the true cost to him of the item. He may offer a comprehensive clinical examination and treatment services only within the scope of practice and must avoid misleading indications of services and licensure.

Carol Iaizzi, D.C. – Settlement Letter in Lieu of Disciplinary Proceeding issued September 8, 1999, based on an advertising violation deemed to be professional misconduct. ORDERED: Cease and desist from utilizing claims of professional services performed or materials used that are represented to be superior to that which is ordinarily performed or used; pay penalty in the amount of \$250.

Jeffrey Behrend, D.C. – Consent Order Establishing Limitation on License filed September 15, 1999, based upon an indictment by a Mercer County Grand Jury. ORDERED: Shall not examine or treat any female patient until resolution of the criminal charges and further Order from the Board.

Wayne M. Poller, D.C. – Settlement Letter In Lieu of Formal Disciplinary Proceeding issued November 18, 1999, for violation of the advertising regulation which is deemed to be professional misconduct. ORDERED: cease and desist from misleading advertisements; imposition of a civil penalty of \$1,250.00.

David D'Angelo, D.C. – Settlement Letter in Lieu of Disciplinary Action Proceeding issued November 18, 1999, based on a violation of scope of practice by treating patients for Carpal Tunnel Syndrome. ORDERED: Cease and desist from treating, providing or ordering therapeutic devices outside the scope of practice; issuance of a reprimand; costs imposed in the amount of \$2,338.38.

Steven Plinio, D.C. – Final Decision and Order filed January 22, 2000, based upon a conviction in New Jersey Superior Court for double billing for chiropractic services and prescribing transport services that were not necessary for patients; also for patients receiving massage therapy without spinal adjustments and billing for services never provided. ORDERED: Revocation of license. May apply for reinstatement upon the successful completion of all terms ordered by the Superior Court of New Jersey, Law Division; and documentation demonstrating satisfaction of all of the provisions imposed by the sentencing; shall cease and desist from engaging in any of the conduct found to be unlawful.

Michael Corey, D.C. – Consent Order filed February 2, 2000, based on respondent answering "No" on his biennial registration form to the question concerning arrests, charges or convictions despite having had an arrest and having pled guilty to a disorderly persons' offense. ORDERED: Reprimand; license suspended for a period of six months all stayed to serve as probation; imposition of a civil penalty of \$1000 and costs of investigation of \$323.

Craig Leavitt, D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued February 17, 2000 based upon a failure to accurately record the patient's subjective complaints in support of his diagnosis; failure to accurately record the performance of orthopedic and neurological tests; failure to record the performance of physical modalities with each visit; failure to document a changed diagnosis; and failure to record and substantiate the taking of X-rays. ORDERED: Cease and desist from a recurrence of the violations; issuance of a formal reprimand; imposition of a penalty of \$750 and costs of \$2,841; required to complete and pass a course in recordkeeping approved by the Board.

continued on the next page

Disciplinary Actions

Domenic Fontanarosa, D.C. – Settlement Letter in Lieu of Filing a Formal Disciplinary Complaint issued April 6, 2000, based upon his offering a service (endermologie) within his office that was not within the scope of chiropractic practice; respondent also permitted a non-chiropractic assistant to perform massage and advertised “free” treatment without the value of the offered treatment. ORDERED: Cease and desist from a recurrence of the violations; issuance of a formal reprimand; imposition of a penalty in the amount of \$500.

A. Jeffrey Srou, D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued April 6, 2000, based on his prescribing and authorizing the administration of a physical modality by an unlicensed person. ORDERED: Cease and desist from prescribing EMS units to patients for home use and care; the issuance of a formal reprimand admonishing the licensee for the violation; imposition of a penalty in the amount of \$500.

John F. Zimmerman, Jr., D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued September 14, 2000 based on failure to maintain a contemporaneous, permanent patient record. Records submitted in defense of a malpractice case were materially different from original records. ORDERED: Cease and desist from the violation; issuance of a formal reprimand; imposition of a penalty in the amount of \$1,000.

Frank J. Marinaro, D.C. – Consent Order filed March 15, 2000, based upon a conviction in United State District Court for tax evasion and mail fraud. ORDERED: Revocation of license; may reapply after five years; pay investigative costs of \$645.11.

Ralph Santonastaso, D.C. – Settlement Letter in Lieu of Formal Disciplinary Complaint issued April 6, 2000; offered service of endermologie, which is not within the scope of practice of a chiropractor. ORDERED: Cease and desist from the violations; issuance of a formal reprimand; imposition of a penalty of \$250.

Pasquale Pucciarelli, D.C. – Settlement Letter In Lieu of Formal Disciplinary Complaint issued April 6, 2000 based upon violation of “duty to cooperate” regulation deemed to be professional misconduct. ORDERED: Cease and desist from failing to respond to future inquiries from the Board; issuance of a formal reprimand; imposition of a penalty of \$1000.

Richard T. Herbert, D.C. – Interim Consent Order filed June 22, 2000 based upon an arrest for possession of a controlled dangerous substance, obtaining possession of a controlled dangerous substance by fraud and health care claims fraud. ORDERED: Voluntary cease and desist from the practice of chiropractic until he appears before the Board.

Khemfoia Padu, D.C. – Settlement Letter in Lieu of Disciplinary Proceeding issued July 26, 2000, for advertising beyond his scope of practice. ORDERED: Cease and desist from referring to himself as a nutritionist; cease and desist from selling nutritional supplements; issuance of a formal reprimand; imposition of a penalty of \$500.

Scott White, D.C. – Consent Order filed August 16, 2000, based upon an arrest on charges of sexual assault. ORDERED: License restricted. Shall engage the use of a female monitor approved by the Board; keep door open while treating female patients; notify Board of results of criminal proceeding. Failure to comply may result in further disciplinary proceeding.

Paul Campana, D.C. – Order filed August 23, 2000 based on respondent pleading guilty in United States District Court to the crime of tax evasion. ORDERED: License suspended for a period of three years and six months with six months to be an active suspension to correspond with a period of incarceration. The remainder of the suspension shall serve as a period of probation, as long as respondent abides by the terms of the sentencing and supervised release.

James Apito, D.C. – Final Order of Discipline filed October 26, 2000, based upon conviction for possession of a controlled dangerous substance and possession of drug paraphernalia. ORDERED: License to practice chiropractic suspended until respondent submits an evaluation of treatment; upon resuming active practice respondent shall be required to appear before the Board to demonstrate fitness.

Malvina Avella-Perez, D.C. – Settlement letter in Lieu of filing a Formal Disciplinary Complaint issued November 21, 2000, for performing physical modalities not in conjunction with chiropractic adjustments; billed for services separately and deemed to be professional misconduct. ORDERED: Cease and desist from aforesaid practices; issuance of a formal reprimand; imposition of a penalty of \$2,500.

Disciplinary Actions

Emilio Grugnale, D.C. – Consent Order filed November 16, 2000, based upon evidence of the use of illegal controlled dangerous substances. ORDERED: Cease and desist in the use of illegal CDS; penalty of \$10,000, with payment of \$1,000 due upon entry of the Order. Balance of \$9,000 stayed pending two years of successful compliance with the terms of the Order, which includes participation in the Physicians Health Program, urine monitoring and counseling.

Michael Lagana, D.C. – Settlement Letter In Lieu of Formal Disciplinary Proceeding issued December 5, 2000 based upon violation of advertising regulation by guaranteeing a cure. ORDERED: A civil payment of \$500; cease and desist from future violations of the Board's advertising regulations.

Andrew J. Griffiths, D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued December 8, 2000 based on violations of advertising regulations by promoting "Non-invasive Cellulite Treatment" which goes beyond the scope of chiropractic practice. ORDERED: Cease and desist from violations; the issuance of a formal reprimand; pay a penalty in the amount of \$500.

Leonard Confalone, D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued February 13, 2001 for an advertising violation and for going beyond the scope of practice. ORDERED: Cease and desist from using the term "Dr." without adding the word "chiropractor" after his name as a qualifier as required by statute; cease and desist from advertising services for the treatment of "anxieties, phobias and traumas"; issuance of a formal reprimand and imposition of a penalty of \$250.

Paul Campana, D.C. – Order filed February 14, 2001. Respondent may resume the active practice of chiropractic, but with continued probation for the remainder of his suspension as requested in the Final Order of August 23, 2000, provided the respondent does not violate the conditions of his sentencing or supervised release.

Darryl Campana, D.C. – Final Order filed February 14, 2001, based upon a conviction in the United States District Court for an attempt to evade or defeat taxes. ORDERED: License suspended for a period of three years and six months. Six months of the suspension is active to correspond with the period of imprisonment and the remainder is stayed to serve as a period of probation, provided that respondent abides by all terms of the federal conviction.

Frederick C. Padovano, D.C. – Consent Order filed February 15, 2001, for incompetence in certain respects which constituted the overutilization of chiropractic care, and inadequate recordkeeping. ORDERED: Suspended license for a period of six months; said suspension shall be stayed, but shall be active upon a showing of respondent's noncompliance with any of the terms and conditions; shall successfully complete and pass specified continuing education requirements, pay civil penalties of \$2,000 and costs of investigation in the amount of \$330. Failure to comply may result in further disciplinary proceedings.

James Herzog, D.C. – Settlement Letter In Lieu of Filing a Formal Disciplinary Complaint issued on March 6, 2001 concerning lease of office space to two medical goods suppliers and a neurologist, in violation of a statutory prohibition on the payment of referral fees. ORDERED: Shall cease and desist from entering into lease agreements which amount to an acceptance of referral fees; issuance of a formal reprimand; imposition of a penalty of \$2,500.

Virginia A. Fatato, D.C. – Final Decision and Order After Grant of Summary Decision and Hearing on Mitigation of Penalty filed May 14, 2001, based upon a guilty plea in the Superior Court of New Jersey of theft by deception and falsifying records. ORDERED: License suspended for a period of five years, two years active, with the remainder stayed to serve as a period of probation. Respondent must successfully complete and pass the ProBE (Professional Problem Based Ethics) course; successfully complete and pass 24 hours of recordkeeping and documentation; shall take and pass the Board's jurisprudence examination and shall appear before the Board prior to reinstatement of her license; shall comply with all of the directives for a disciplined licensee; and pay the costs of investigation. Failure to comply with any provision of this Order may result in subsequent disciplinary proceeding for failure to comply with an Order of the Board.

Jay Jacobson, D.C. – Order of Reinstatement filed on May 21, 2001. Respondent's license to practice chiropractic was suspended for a period of five years by a Consent Order filed on February 8, 1996. Board finds that respondent has complied with the terms of the Consent Order. ORDERED: Respondent shall complete at least 36 hours of Board-approved continuing

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Disciplinary Actions

continued from the previous page

education and shall successfully complete the Special Purposes Examination for Chiropractic (SPEC) offered by the National Board of Chiropractic Examiners prior to the resumption of active practice.

Michael Capilli, D.C. – Consent Order filed on May 24, 2001 based upon findings that respondent engaged in behavior deemed to be professional misconduct in violation of Board regulations on sexual misconduct, specifically N.J.A.C. 13:44E-2.3(g); respondent received a referral fee from a massage therapist in violation of N.J.A.C. 13:44E-2.7; further, respondent treated an employee of his practice without maintaining a patient record. ORDERED: Respondent's license is suspended for period of one year, all of which is stayed to serve as period of probation; completion of the ProBE (Professional Problem Based Ethics) course; penalties and costs totaling \$13,784.33.

Eleanor Bednar, D.C. – Consent Order filed on July 12, 2001. License voluntarily surrendered based upon information that respondent failed to document the rationale for diagnostic tests, failed to disclose history necessary to determine appropriate treatment; failed to record the application of test results and failed to describe the care and treatment of patients.

Anthony DiPastina, D.C. – Consent Order filed on July 12, 2001, based upon respondent's failure to comply with the terms of a prior Consent Order filed on February 3, 1998. ORDERED: Respondent's license is suspended for six months, the entirety of which is stayed to serve as period of probation, during which time respondent shall, at his own expense, engage the services of a monitor, approved by the Board, to review patient records on a random basis to insure conformance with recordkeeping requirements set forth in Board regulations. Respondent is also required to attend and complete 24 hours of continuing education in recordkeeping and documentation, and also complete the ProBE (Professional Problem Based Ethics) during the period of probation.

Daniel Colache, D.C. – Consent Order filed on July 19, 2001 based upon unprofessional conduct by engaging in discussions of a sexual nature that were unrelated to legitimate patient needs, in violation of N.J.A.C. 13:44E-2.3(e) and (g). ORDERED: Respondent to cease and desist from the conduct cited; is reprimanded and ordered to pay civil penalties and costs in the amount of \$4,443.04 ■

Members of the State Board of Chiropractic Examiners



(Back row, left to right)

Executive Director Kevin B. Earle, Dr. Apuzzio, Dr. O'Connor, Dr. Rada, Mr. Blum and Dr. Murphy.

(Front row, left to right)

Dr. Atkisson, Dr. Winters, Dr. Senatore and Dr. Stetzel.

(Missing) Public Member Hadren Simmons.

A MESSAGE FROM THE BOARD PRESIDENT —

William F. Winters, D.C.

The Board has received a large volume of comments and is required under the law to review each comment and develop responses, after which the issue of final adoption will come to a vote by the Board. We have also introduced a Utilization Review Regulation, which is an attempt to address the review of treatment by out-of-state individuals and proposes that such reviews must be performed by individuals licensed in New Jersey. The proposal further recommends that no individual shall perform such a review unless he or she has at least two years of clinical practice. The Board has also created a task force to study and develop comprehensive guidelines for the practitioner operating in a multidisciplinary practice.

In carrying out their duties, Board members are sometimes confronted with issues of a serious nature. Each of these issues requires a thorough investigation and careful consideration of what action should be taken in accordance with State law. Others are of a less serious nature and might be avoided if the chiropractor had a clear understanding of the rules and regulations governing the practice of chiropractic, and also used a little common sense. With this in mind, the Board has taken steps in recent years to provide its licensees with booklets containing the statutes and regulations governing chiropractic practice in New Jersey. New licensees are expected to study these requirements and pass an examination before licensure. I highly recommend that licensees take the time to familiarize themselves with these laws and regulations to avoid problems with violations that may result in some public disciplinary action. As the adage goes: "An ounce of prevention is worth a pound of cure."

From my experience with Board issues, I thought it would be helpful to share with you what I consider to be the State Board of Chiropractic Examiners' Top 10 List:

10. Know your regulations.
9. Don't deviate from your Scope of Practice.
8. If you deal with insurance issues, avoid becoming creative in coding and billing.
7. Be truthful in advertising and follow the rules.
6. Although continuing education is not required by law in New Jersey at present, the Board encourages licensees to stay up-to-date with the most current developments regarding the philosophy, art and science of chiropractic.
5. Get help immediately if you have a problem with drugs or alcohol.
4. Be mindful of current recordkeeping requirements. Document, document, document!
3. Be truthful and thorough in discussing your chiropractic care plan and in clarifying financial arrangements to be certain that the patient understands. Document your records accordingly.
2. Always act in the best interests of your patient. Be mindful of your obligation to avoid situations that may be perceived by the patient to be sexual in nature.
1. Be thankful every day for the opportunity you have been given to be a chiropractor serving your patients, for you affect their lives in many ways.

Care for them with the utmost integrity. Remember, being a professional

licensed by the State is a privilege. Everything you do is a reflection on you as a person, as well as on the chiropractic profession.

In closing, I would like to relate a personal note. Chiropractic has grown over the past 105 years to become the largest natural healing profession in the world today. This has been accomplished because chiropractic has a unique and distinct approach to health. It is my personal belief that the public is best served when chiropractic is practiced in its purest form.

I encourage our licensees to attend the open public sessions of our Board meetings. This will help you understand the functions of our Board. With open communication between the Board and the profession, we can continue to fulfill our statutory requirement of protecting the consumer, but also maintain and provide the high standards of chiropractic health care which must be delivered to the citizens of New Jersey.

Very truly yours,



William F. Winters, D.C.
Board President

A MESSAGE FROM THE EDITOR –

The Board uses this newsletter to help keep its licensees informed of the latest developments in the State Board of Chiropractic Examiners. In each issue we will publish interesting information, such as explanations of the Board's interpretations of statutes and regulations, as well as other helpful hints to allow you to better serve your patients. We will also publish, at the Board's discretion, disciplinary matters as they pertain to you and your practice, to help you avoid some common pitfalls and mistakes.

Part of the Division of Consumer Affairs, under the Department of Law and Public Safety headed by the Attorney General, the State Board of Chiropractic Examiners functions as a law enforcement agency. Its purpose is set forth in the "legislative findings and declarations" in the statute that established the Board:

"...it is a valid public purpose to establish a separate board to regulate the practice of chiropractic...to properly protect the citizenry who receive the services of a chiropractor by maintaining and ensuring standards of competency and integrity of the profession and preventing unsafe, fraudulent or deceptive practices which may damage the health of those citizens, as well as the reputation of the profession in this State." N.J.S.A. 45:9-41.18.

Today, we have a message from Dr. William Winters, president of the State Board of Chiropractic Examiners, and also from Mr. Kevin Earle, executive director of the Board, as well as articles that hopefully will assist you in your professional practice. I trust you will enjoy this issue of the State Board of Chiropractic Examiners' newsletter.

Joseph J. Murphy, D.C.

Licensee Duty to Cooperate and to Comply with Board Orders

The Division of Consumer Affairs has adopted uniform regulations requiring all licensees of the professional boards to cooperate in any inquiry, inspection or investigation conducted by or on behalf of any of the Division's boards. A licensee's failure to cooperate may constitute unprofessional conduct, and thus the licensee may be subject to disciplinary action.

The following actions may be deemed a failure to cooperate:

- Failure to respond in a timely manner to an inquiry for information.
- Failure to provide records related to licensee conduct in a timely manner.
- Failure to attend any scheduled proceeding at which the licensee's appearance is directed.
- Failure to provide information in a timely manner pursuant to a request.
- Failure to provide access to premises from which a licensed profession is conducted.
- Failure to answer any question.
- Failure to respond to a subpoena.
- Failure to notify the Board in a timely manner of a change of address.
- Failure to comply with any order duly entered by the Board.

Where are you?

With every renewal period, the Board office receives hundreds of returned renewal forms because a chiropractor has changed his or her address, or the forwarding time of the address has expired, or the forwarding address has not been provided. Licensees should be aware that the laws and regulations governing the practice of chiropractic require that they send a change of address into the Board office within 10 days. This insures that any important Board communications, such as renewed licenses, will reach you in a timely fashion. The failure to notify the Board office of a change of address as soon as possible could subject you to monetary penalties for a violation of Subchapter One of the Uniform Regulations: "Licensee Duty to Cooperate and to Comply with Board Orders."

Licensees should be reminded that insurance and managed care companies regularly check the Board office for current and active licenses. Under the law, any license that is not renewed within the requisite time frame is automatically suspended. Licensees may subject themselves to serious financial penalties by failing to adhere to this simple requirement.

The statute governing chiropractic practice also requires that you notify the Board office of your practice location and/or employment. To facilitate this reporting, you may send the form below to the Board office.

Return to: **State Board of Chiropractic Examiners**

P.O. Box 45004
Newark, NJ 07101

(Please type or print all information)

Name

MC

License number

Address of record

Employer or Practice name

Home telephone number (include area code)

Office telephone number (include area code)